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December 6, 2016

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Lifeline Connects Coalition Oral *Ex Parte* Presentation; WC Docket Nos. 09-197, 11-42, 10-90

Dear Ms. Dortch:

On December 2, 2016, Susan Berlin of Telrite Corporation; Melissa Slawson of Blue Jay Wireless, LLC; Chuck Campbell of CGM LLC; and John Heitmann, Joshua Guyan, and Matthew Weinmann of Kelley Drye & Warren LLP met on behalf of the Lifeline Connects Coalition (Coalition)¹ with Travis Litman from Commissioner Rosenworcel's office to discuss implementation of the Lifeline Modernization Order.²

We first congratulated Mr. Litman and the Commission on the transition of the Lifeline program to broadband and noted that Coalition members Blue Jay, i-wireless and Telrite have all rolled out new Lifeline broadband plans starting December 2, 2016 in the states where they are designated as eligible telecommunications carriers (ETCs). The entry level wireless Lifeline broadband plans will generally include 500 MB of data in addition to some voice minutes and unlimited texts, and a Wi-Fi-enabled handset, at no cost to eligible low-income consumers. Most handsets will also be hotspot-enabled so that Lifeline subscribers can "tether" other devices such as computers and tablets. These devices and discounted broadband service will allow low-income

¹ The members of the Lifeline Connects Coalition are American Broadband & Telecommunications Company; Blue Jay Wireless, LLC; i-wireless, LLC; and Telrite Corporation.

² See *Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (Apr. 27, 2016) (Lifeline Modernization Order).

Marlene Dortch, Secretary
December 6, 2016
Page Two

Americans to set up email accounts, search for jobs and shifts, interact with healthcare providers and help to close the “Homework Gap” by allowing parents and students to do homework and keep track of school information. This transition has been made possible for wireless Lifeline broadband providers because of the 12-month benefit port freeze adopted in the Lifeline Modernization Order and the stability it brings for the carrier-customer relationship.³

To celebrate this achievement and build awareness of Lifeline broadband availability, the Coalition partnered with the National Hispanic Media Coalition (NHMC) on December 1, 2016 for an event near Capitol Hill to educate congressional staff on how to connect their constituents to affordable broadband. The event featured keynotes from Representative Anna Eshoo (D-CA), Ranking Member, Committee on Energy and Commerce, Communications and Technology Subcommittee and Commissioner Jessica Rosenworcel, and a panel discussion moderated by Jessica Gonzalez from NHMC and including Claude Aiken, Legal Advisor to Commissioner Mignon Clyburn, Jeni Kues from i-wireless, LLC, and Cheryl Leanza, Founder of A Learned Hand and policy advisor to the United Church of Christ, Office of Communications.⁴ The Coalition members thanked Mr. Litman for his and the Commissioner’s attendance and participation.

We also discussed the status of the Lifeline Broadband Provider (LBP) petitions filed by Coalition members Blue Jay, i-wireless and Telrite to offer Lifeline-supported broadband services essentially nationwide. Despite meeting the Commission’s criteria for 60-day streamlined processing, the Bureau has pulled these Coalition members off of streamlined processing. Blue Jay, i-wireless and Telrite all have exemplary compliance records operating in dozens of states for many years and use automated and manual review processes that go beyond the requirements of the Commission’s rules. The petitioners checked in several times to determine whether the Bureau needed more information on their LBP petitions and were informed that the Bureau had all the information it needed. At this point there is no valid legal or public policy reasons to withhold grant of these LBP petitions.

Thus far only wireless ETCs have proposed essentially nationwide Lifeline-supported broadband services. AT&T, Verizon, Cox Communications and approximately sixty more providers (almost all wireline) have informed the Commission that they will not be providing Lifeline broadband throughout their service territories. No wireline ISPs have submitted LBP petitions to the Commission. And yet the Commission is restricting the market entry and competition it said it wanted in the Lifeline Modernization Order by arbitrarily picking and choosing winners among the carriers that actually want to provide the mobile Lifeline broadband

³ See 47 C.F.R. § 54.411; Lifeline Modernization Order ¶¶ 385-394.

⁴ See <http://www.nhmc.org/nhmc-co-host-briefing-capitol-hill-lifeline-connects-coalition/>.

Marlene Dortch, Secretary
December 6, 2016
Page Three

service that customers clearly want and need (85 percent of Lifeline subscribers choose wireless services).

Petition for Reconsideration of Aspects of the Lifeline Modernization Order

The Coalition representatives addressed the pending petition for reconsideration that it filed with several other wireless Lifeline providers over the summer.⁵ Its positions are reflected in the included **Exhibit**. The Coalition's primary focus is on the planned increases in broadband minimum standards on December 1, 2017, which are divorced from the "central touchstone" of affordability. Further, the Commission should respect consumer choice between broadband and voice service offerings by completing the State of the Lifeline Marketplace Report before sunsetting Lifeline voice support.

With respect to the National Lifeline Eligibility Verifier (National Verifier), the Commission should clarify that the National Verifier will verify eligibility in real-time, even where databases are not available and manual review is required (which is what wireless ETCs do today with real-time review queues connected via the Internet). The Commission should also adopt safe harbors for enrollments that use the National Verifier and stop wasteful processes like continuing to audit for duplicates when the subscribers have been enrolled through NLAD (which may help to entice wireline providers to participate that may be wary of the unreasonable enforcement risks in the program currently). Further, the Commission should extend streamlined consideration to all ETC petitions, but unlike the LBP process, the streamlined timeframes must be followed. Efficiency and predictability in Commission decision-making will foster market entry and competition.

The Commission should also turn its attention next year to the rolling recertification process adopted in the Lifeline Modernization Order. Although there have been positive signs about the potential involvement of ETCs in the recertification process once the National Verifier is in place, the Commission should clarify that ETCs will be heavily involved in that process due to their relationships with subscribers. Further, the National Verifier should not recertify subscribers that have transferred their benefit in the same year, which effectively serves as a recertification. To do so will confuse and unnecessarily burden subscribers. In addition, the Coalition agrees with several

⁵ See Joint Lifeline ETC Petitioners' Petition for Partial Reconsideration and Clarification, WC Docket Nos. 11-42, 09-197, 10-90 (filed June 23, 2016) (Petition for Reconsideration); Joint Lifeline ETC Petitioners' Opposition to Petitions for Reconsideration, WC Docket Nos. 11-42, 09-197, 10-90 (filed July 29, 2016) (Opposition); Joint Lifeline ETC Petitioners' Reply in Support of Their Petition for Reconsideration, WC Docket Nos. 11-42, 09-197, 10-90 (filed Aug. 8, 2016) (Reply).

KELLEY DRYE & WARREN LLP

Marlene Dortch, Secretary
December 6, 2016
Page Four

other parties that the Commission should delay rolling recertification until the National Verifier is in place to reduce unnecessary burdens on ETCs.

Finally, the Commission should continue to ignore calls to ban in-person handset distribution and incentive-based compensation, which would harm consumers, competition and the Lifeline program as a whole.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically.

Respectfully submitted,



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Enclosure

cc: Travis Litman

EXHIBIT

Lifeline Connects Coalition

Petition for Partial Reconsideration and Clarification; Filed June 23, 2016

Opposition to Petitions for Reconsideration; Filed July 29, 2016

Reply in Support of Petition for Reconsideration; Filed August 8, 2016

The Lifeline Connects Coalition applauds the Commission for taking important steps in the Lifeline Modernization Order to bring the Lifeline program further into the 21st Century. However, several aspects of the adopted rules would undermine the important goals of the Lifeline program. In its petition for reconsideration and clarification, the Coalition offers targeted proposals for rule changes or clarifications that would enhance competition, consumer dignity and innovation, while removing unnecessary friction and confusion in the rules as initially adopted.

I. The Commission's Minimum Service Standards Should Be Revised to Account for the Affordability Challenges of Low-Income Americans and the Continuing Value of Voice Service

- **Modify the Minimum Service Standard Formula and Adopt a More Graduated Phase-In.** In the Lifeline Modernization Order, the Commission established a broadband minimum service standard that disregards the Lifeline Program's "central touchstone" of affordability for determining the minimum service standard. It is literally not part of the "formula." The formula is also based on meeting the needs of an average multi-member household and would disproportionately impact smaller-than-average households by forcing them to buy more data than they likely want or need. The Coalition proposes an alternative formula for devising the minimum service standard that directly addresses the infirmities of the Commission's adopted formula, but would still provide an evolving and generous level of service for low-income consumers. That proposal is as follows:
 - **Step 1:** the Commission determines the average mobile broadband data usage per individual as reported by the Commission in its annual Mobile Competition Report, rounds that number to the nearest hundredths place, multiplies that result by 0.7 "to adjust for the fact that in these circumstances a 'substantial majority' of subscribers will use less than the average," and rounds that result down to the nearest 250 MB.
 - **Step 2:** the Commission compares the result of Step 1 to the average retail price of similar offerings in the market to determine whether the minimum standard would be "reasonably affordable to the average low-income single-person household." If the answer is "yes," then the result of Step 1 will be the minimum service standard. If the answer is "no," then the Commission will take steps necessary to make the minimum service standard affordable, e.g., by lowering the standard or increasing the subsidy. In either case, the minimum service standard will be effective beginning December 1 of the following year.

If this framework were applied today based on the average individual usage (1.361 GB per month), Step 1 would result in a starting minimum service standard of 750 MB per month beginning December 1, 2017. Based on average usage increases over the last several years (approximately 240 MB per year), we project that the minimum service standard beginning December 1, 2018 would be 1 GB, followed by 1.25 GB on December 1, 2019. Using current pricing as a foundation, we believe that this standard accurately reflects market trends and in the near term would not require resorting to the safety valve.

There is substantial support from other petitioners, including CTIA, Sprint, TracFone and Q-Link that the Commission should reconsider the broadband minimum service standard formula.

- **Complete the State of the Lifeline Marketplace Report Before Sunsetting Voice Support.** The Commission should not step down support for mobile voice Lifeline service until it has completed its review of the Wireline Competition Bureau's (Bureau's) State of the Lifeline Marketplace Report because ETCs will not be able to provide the voice minimum service standards at the reduced reimbursement rate and consumers will start to lose access to voice service, including emergency calling. The Bureau should submit the Report by June 30, 2019. There is substantial support from other petitioners and commenters, including GVNW,

NASUCA, Sacred Wind, NTCA and WTA and TracFone, that the Commission should reconsider the voice phase-out.

II. The Commission Should Reconsider or Clarify Several Issues Related to the National Lifeline Eligibility Verifier

- **Enable real-time eligibility verification.** The Commission should clarify that the National Verifier will verify eligibility in real-time. Real-time enrollment is essential to preserving equality of consumer experience for low-income and non-low-income consumers; the dignity of low-income consumers; and the ability for ETCs to provide advanced handsets and services.
- **Adopt common-sense safe harbors.** The Commission should adopt several safe harbors to encourage participation of Lifeline broadband providers by easing the enforcement risks for ETCs including: a safe harbor for enrollments using the National Verifier since ETCs will not retain eligibility documentation and a safe harbor for ETCs that use any universal or standardized forms that the Bureau or USAC adopts.

III. The Commission Should Extend Streamlined Consideration to All ETC Petitions

- The Commission should extend the 60-day streamlined designation process to voice-based ETC petitions, which will increase competition in the voice Lifeline market, driving down costs and promoting service-level innovation.
- The Commission should also impose streamlined processing for appeals, guidance and other decisions affecting the Lifeline program such that ETC requested actions are deemed granted if not acted upon in a set timeframe.
- NASUCA's opposition to a streamlined voice ETC application process ignores the overwhelming evidence that the current process takes an unreasonable amount of time. At the state level, ETCs face unreasonable delays. For example, the New Mexico Public Regulation Commission has not approved a single ETC application since 2012, and the Washington Utilities and Transportation Commission has left three ETC applications pending for an average of 31 months. There is no justifiable reason why these applications should be left pending for more than three months, let alone four years or more.

IV. The Commission Should Refine Certain Aspects of the Rolling Recertification Rule, and Consider a Delay in Implementing the Rule Until the National Verifier is Established

- The Commission should clarify that ETCs will be heavily involved in the recertification process through customer contact and information collection.
- The Commission should reconsider its decision not to require ETCs to recertify subscribers that switched service providers in the same year because this will confuse and unnecessarily burden consumers and result in de-enrollment of more eligible Lifeline subscribers each year.
- We agree with GCI, NTCA, WTA and USTelecom that the Commission should delay the transition to rolling recertification until the National Verifier is in place. The rolling recertification rule will impose tremendous burdens on ETCs, requiring them to modify systems to track each subscriber's recertification date, which could be especially burdensome for smaller ETCs.
- The Joint Consumer Groups misunderstand Joint Petitioners' proposal and the burdens that rolling recertification will have for consumers and ETCs. Consumers will need to remember their initial date of enrollment, and recertify on the basis of that date, even if it falls a day, week, or month after changing providers, which in many cases would lead consumers to be de-enrolled despite continued eligibility to receive service.

V. The Commission Should Maintain the 12-Month Benefit Port Freeze for Broadband Plans

- The 12-month benefit port freeze *enhances* consumer choice and service offerings by promoting market entry, competition, and innovation. The port freeze is essential for wireless providers to meet the Lifeline Modernization Order's broadband minimum service standards and handset requirements. The trade-off of a

longer term contract or financing plan in exchange for a more advanced handset and a better service plan is a reasonable one.

- The 12-month benefit port freeze counteracts potential waste, fraud and abuse in the Lifeline program. The abuse by “flippers” results in significant costs to service providers and the program as a whole, leaving many ETCs unwilling to offer advanced handsets without a significant additional subsidy.

VI. The Commission Should Ignore Calls to Ban In-Person Handset Distribution and Incentive Based Compensation

- In its petition for reconsideration, TracFone one again called on the Commission to prohibit real-time, in-person handset distribution and to ban incentive-based compensation. The Commission should ignore TracFone’s proposal, which would harm consumers, competition, and the Lifeline program as a whole.
- TracFone’s proposal to ban in-person handset distribution is an anticompetitive attempt to impose, by rule, its chosen business practice to the detriment of its competitors. This proposal has no basis in fact and would limit competition, undermining one of the core goals of the Lifeline Modernization Order. In-person enrollment and handset distribution has been an essential driver of Lifeline service adoption among low-income consumers, and promotes dignity in the enrollment process.
- TracFone’s proposal to ban incentive-based compensation is similarly unsupported by the facts. Incentive-based compensation has played a vital role in driving adoption of Lifeline services. To the extent a few agents compensated on an incentive basis have acted improperly, the appropriate remedy is to adopt smart controls. Finally, in today’s Lifeline market, agents serve only a clerical capacity, they do not make decisions about whether a consumer is eligible to participate in the program.